Office-Supreme Court, U.S.
FILED
DEC 19 1961
JOHN F. DAVIS, CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 615

GRANT V. KAVANAGH.
APPELLANT,

v.

ROBERT B. STENHOUSE,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

JURISDICTIONAL STATEMENT

PONTARELLI & BERBERIAN
ARAM K. BERBERIAN
49 Westminster Street
Providence 3, Rhode Island
Attorney for Appellant

Blanchard Printing Company, Boston, Mass. — Law Printers

TABLE OF CONTENTS

	Page
Jurisdiction	2
Question Presented	2
Statutes Involved	3
Statement of the Case	4
The Question is Substantial	5
Appendix A: Opinion of R.I. Supreme Court	9
Appendix B: Text of Statutes	19

Citations of Cases

Carter v. *Southern Ltd.*, 303 Ill. App. 502	6
Culombe v. *Connecticut*, 367 U.S. 568	6, 7
DeSalvatore v. *Delaware*, 163 A2 244	7
Douglas v. *State*, 152 Ga. 379	6
Draper v. *U. S.*, 358 U.S. 307	7
Henry v. *U. S.*, 361 U.S. 98	7
In re Kellem, 57 Kan. 700	6
Leger v. *Warren*, 62 Ohio St. 500	6
Pinkerton v. *Verberg*, 73 Mich. 573	6
Polk v. *State*, 167 Miss. 506	6
Rhodes v. *McWilson*, 202 Ala. 68	6
Robinson v. *Miner*, 68 Mich. 549	6
Trupiano v. *U. S.*, 334 U.S. 699	7
U. S. v. *Bonanno*, 180 U.S. 71	7
U. S. v. *DiRe*, 332 U.S. 581	7
U. S. v. *Bufalino*, 285 F.2 408	7
Upshaw v. *U. S.*, 335 U.S. 410	6
Wolf v. *Colorado*, 338 U.S. 25	7

In the
Supreme Court of the United States

OCTOBER TERM, 1961.

No.

GRANT V. KAVANAGH,
APPELLANT,

v.

ROBERT B. STENHOUSE,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

JURISDICTIONAL STATEMENT

Appellant Grant V. Kavanagh appeals from the decision of the Supreme Court of the State of Rhode and Providence Plantations, entered on 1 November 1961, overruling the appellant's exceptions to rulings of the Superior Court of that state, sitting in the county of Washington, and remanding the case to that court for entry of judgment upon the verdict in favor of appellee Stenhouse. Appellant

submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the Rhode Island Supreme Court is attached hereto as Appendix A.

Jurisdiction

Appellant Kavanagh sued appellee Stenhouse in a common law action of false arrest and imprisonment. Appellee Stenhouse justified the arrest by virtue of General Laws of Rhode Island 1956. 12-7-1. Upon appellant's challenge to its validity, the trial court held it constitutional under the due process clause of the United States constitution and so charged the jury. The jury returned a verdict of not guilty and the appellant prosecuted his bill of exceptions to the Rhode Island Supreme Court. That court held that G.L. 1956, 12-7-1 was not repugnant to Article XIV, section 1, of the amendments to the United States constitution. The Rhode Island Supreme Court order was entered 1 November 1961 and appellant filed his notice of appeal in that court on 2 November 1961. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28 United States Code, Section 1257 (2).

Question Presented

Does General Laws of Rhode Island, 1956, 12-7-1, (Public Laws of R. I., 1941, chapter 982, section 1, clause 1) authorizing police officers to detain a suspect incommunicado for investigation and interrogation, requiring certain

information to be given by the suspect, and permitting the police to either release the suspect after two hours or to charge him with a crime and subsequently arraign him, within 24 or 48 hours, violate the suspect's immunity from deprivation of his liberty without due process of law as guaranteed to him by Article XIV, section 1 of the amendments of the United States Constitution, which includes the immunity from unreasonable seizures within Article IV of the Amendments to the United States Constitution, which is applicable to the several states.

Statutes Involved

G.L. 1956, 12-7-1 reads as follows:

> 12-7-1. Temporary detention of suspects.—A peace officer may detain any person abroad whom he has reason to suspect is committing, has committed, or is about to commit a crime, and may demand of him his name, address, business abroad and whither he is going; and any such person who fails to identify himself and explain his actions to the satisfaction of such peace officer may be further detained and further questioned and investigated by any peace officer; provided, in no case shall the total period of such detention exceed two (2) hours, and such detention shall not be recorded as an arrest in any official record. At the end of any such detention period the person so detained shall be released unless arrested and charged with a crime.

In order to fully appreciate the scope of G.L. 1956, 12-7-1, it will be necessary to refer to sections 3, 4, 7, 8, 10, 12, and 13 of chapter 7. These are set forth in Appendix B hereto.

Statement of the Case

Appellant was a passenger in an automobile operated by one Wheeler and involved in an accident in the process of which 2 utility poles were struck. Appellee Stenhouse, a lieutenant of the Westerly police department, came upon the scene and ordered the two occupants of the automobile to be taken to the station for an investigation. During the investigation appellant Kavanagh became argumentative and was placed in a cell. While so incarcerated he committed some acts by reason of which the police filed a charge of reveling against him. This charge was subsequently dismissed by the Rhode Island Supreme Court. No charges were preferred against appellant arising out of the automobile accident. As a matter of fact appellee Stenhouse admitted that he had no reasonable ground to believe that Kavanagh had committed or was committing a crime at the time he ordered the two detained for investigation. Further pertinent facts appear in the Supreme Court's opinion, vide Appendix A.

Appellant Kavanagh brought a common law action of false arrest against appellee Stenhouse in the Washington county superior court. Stenhouse justified solely on basis of G.L. 1956, 12-7-1 that he ordered Kavanagh detained for investigation. At the close of the testimony, Kavanagh moved in writing for a directed verdict on the ground that G.L. 1956, 12-7-1 contravened the due process clause of the federal constitution and that the statute could not validly be the basis of any defense. Upon the denial thereof, Kavanagh requested that the court instruct the jury as to the common law of arrest and arraignment, stating to the court that the due process clause of the federal constitution required such standards. These the court denied. Instead it instructed the jury that if Kavanagh was detained pur-

suant to G.L. 1956, 12-7-1, they should find the defendant Stenhouse not guilty.

Appellant prosecuted his exceptions to all adverse trial court rulings to the Rhode Island supreme court. There he contended that G.L. 1956, 12-7-1, violated both the Rhode Island and federal constitutional provisions. That court held that the legislature had the constitutional right and power to make an distinction between detention for investigation and arrest for crime. Consequently, it held that G.L. 1956, 12-7-1 did not contravene the due process clauses of either constitution.

The Question Is Substantial

G.L. 1956, 12-7-1 is part of the so-called uniform arrest law authored by Professor Sam Bass Warner through the auspices of the Interstate Commission on Crime, an unofficial body composed mainly of law enforcement officials. In addition to Rhode Island, two other states have adopted it; New Hampshire in 1941, now N. H. Revised Statutes, 1955, section 594 et seq., and Delaware in 1951, now Del. Code Ann., title 11, section 1901 et seq. The Commonwealth of Massachusetts and the city of Honolulu, T. H. have laws authorizing detention for investigation and interrogation, but not as extensive as the "uniform" act. The Supreme Court of Delaware in two cases, cited in the opinion of the Rhode Island court, see Appendix A, has upheld the constitutionality of the act. The American Bar Association Special Committee on the Bill of Rights submitted a statement in 1944 to the U. S. Senate subcommittee on constitutional rights of the Committee on the Judiciary in which it strongly deprecated any law which would authorize detention for investigation (see Sen. Res. 234, 1958). It reiterated the criticism of such procedures which was con-

tained in the 1931 report of the National Commission on Law Observance and F forcement (Wickersham Report).

In the United State: detention for the purposes of interrogation has become a common although generally unlawful practice. It has its manifest evils and dangers. The suspects are deprived of freedom without a proper judicial tribunal having found even that there is probable cause to believe that they may be guilty. *Culombe* v. *Connecticut*, 367 U.S. 568, 81 S. Ct. 1860, 1862 (1961).

But there is police right to interrogate whereby, under a system of administrative detention, the privilege against self-incrimination is obviated. Detention incommunicado has no constitutional justification. Idem, concurring opinion, p. 1898.

At common law there was no right of police officials to delay presentment before a magistrate because of a desire to investigate and interrogate the suspect. See *Upshaw* v. *U. S.*, 335 U.S. 410, 69 S. Ct. 170, 93 L. ed. 100; *Carter* v *Southern Ltd.*, 303 Ill. App. 5p2, 25 NE2 590; *Leger* v. *Warren*, 62 Ohio St. 500, 508, 509.

At common law there was no right to arrest, absent warrant, for a past misdemeanor not committed in the officer's presence. Statutes and ordinances authorizing such arrests have been declared violative of the provisions aginst unreasonable seizures, deprivation of fundamental rights and deprivation of liberty without due process.

Robison v. *Miner*, 68 Mich. 549, 557; 37 NW 25 (1868).
Pinkerton v. *Verberg*, 73 Mich. 573, 44 NW 579.
In re Kellem, 57 Kan. 700, 41 P 960 (1895).
Douglas v. *State*, 152 Ga. 379, 110 SE 168.
Polk v. *State*, 167 Miss. 506, 142 S 480.
Rhodes v. *McWilson*, 202 Ala. 68; 79 S 462; 1 ALR 568 (1918).

A fortiorari, a law authorizing arrest for investigation would likewise be invalid.

The function of a warrant is to arrest a suspect and to bring him before a magistrate to answer to a charge of crime. Arrests without warrant are permissible under certain circumstances at common law and such arrests are constitutional under the 4th amendment. See *Henry* v. *U. S.*, 361 U.S. 98; 80 S. Ct. 168, 4 L. ed. 2 134. But whether the arrest is pursuant to or absent a warrant, the arrest must be for the purpose or presentment before a magistrate, not for police investigation and interrogation. *Culombe* v. *Connecticut*, supra. An arrest for such a purpose would be an unreasonable intrusion upon a person's freedom under the 4th amendment. See *Trupiano* v. *U. S.*, 33 U.S. 699, 68 S. Ct. 1229, 92 L. ed. 1663, (1948). And the 4th amendment strictures apply to the states by virtue of the due process clause of the XIV amendment. *Wolf* v. *Colorado*, 338 U.S. 25, 69 S. Ct. 1359, 93 L. ed. 1782.

It is interesting to note that one of the cases cited as authority for the validity of detention for investigation by the Delaware court in *DeSalvatore* v. *Delaware*, 163 A2 244, was *U. S.* v. *Bonanno*, 180 FS 71. However, the court of Appeals for the 2nd circuit reversed that decision. *U. S.* v. *Bufalino et al*, 285 F2 408. Too permeating police surveillance is a greater danger to a free people than the escape of some criminals from punishment. *U. S.* v. *DiRe*, 332 U.S. 581, 595, 68 S. Ct. 222, 92 L. ed. 210.

The 4th amendment should be considered in the political and social milieu in which it was adopted. The colonists had chafed under arbitrary arrests under general warrants and writs of assistance. They knew about the odious lettres de cachet issued in revolutionary France. It can only be assumed that they intended to outlaw arrests not authorized by the common law. *Draper* v. *U. S.*, 308 U.S., 307, 3 L. ed. 2 327; 79 S. Ct. 329. Undoubtedly they would have

intended 4th amendment strictures to apply against arrests for interrogation.

Appellant submits that the question presented is substantial and that it is of public importance that the issue be resolved by this court.

Respectfully submitted,

PONTARELLI & BERBERIAN
ARAM K. BERBERIAN
49 Westminster Street
Providence 3, Rhode Island
Attorney for Appellant

Appendix A

Ex. & c. No. 10,218. Supreme Court

GRANT V. KAVANAGH

v.

ROBERT B. STENHOUSE.

OPINION

POWERS, J. This is an action of trespass for false arrest. The case was tried before a superior court justice sitting with a jury and resulted in a verdict for the defendant. It is before us on the plaintiff's bill of exceptions to the denial of his motion for a directed verdict, to the denial of several requests for instructions to the jury and to certain portions of the charge.

The record establishes that on January 20, 1960 plaintiff and Donald Wheeler, a fellow worker, were involved in a highway accident in the town of Westerly. When James A. Keane of the Westerly police department arrived at the scene, plaintiff was standing outside Wheeler's car at the door on the operator's side and Wheeler was seated behind the wheel. The defendant, a lieutenant in the Westerly police department and apparently the superior officer in charge, arrived shortly thereafter and was advised by Officer Keane that he had Wheeler and plaintiff in custody. It is uncontradicted that Officer Keane advised defendant that both men had been drinking and that, although each had identified Wheeler as the operator, he, Officer Keane, was not sure which of the men was operating the car when it struck and knocked down two telephone poles. Asked why he was not sure, Keane replied, "We've had trouble in the past on cases like this."

It further appears that when the investigation had been completed defendant directed Officer Keane to take both

men to a doctor for examination preparatory to a possible charge of operating under the influence of liquor.

The substance of defendant's testimony, more or less corroborated by Keane and a fellow officer, is that the detention of plaintiff was part and parcel of the investigation of the accident.

It is undisputed that pursuant to defendant's orders Officer Keane drove plaintiff and Wheeler to the police station, where the latter was subsequently charged as the operator and plaintiff was exonerated. Officer Keane testified that he returned to the scene of the accident to continue the investigation but was unable to find any eyewitnesses, which left him with Wheeler's admission that he had been the operator of the car. The defendant corroborated Officer Keane in this regard and added that Keane and Nicholas T. Terranova were in charge of the investigation.

The latter testified that he was on duty at the station when an unidentified person telephoned to report the accident, and he dispatched officer Keane to the scene. He further testified that when plaintiff was brought to the station he appeared to have been drinking, was uncooperative, and refused to produce identification until asked to do so a third time. The record also discloses that both plaintiff and Wheeler were locked up in separate cells and that plaintiff remonstrated against his detention. The testimony is in conflict as to the nature and extent of his remonstrance, but it is uncontradicted that within two hours plaintiff was charged with reveling. See *State* v. *Kavanagh*, R.I. (filed October 20, 1961).

The defendant pleaded justification, relying on G. L. 1956, §12-7-1, which reads as follows:

> "Temporary detention of suspects.—A peace officer may detain any person abroad whom he has reason to suspect is committing, has committed or is about to

commit a crime, and may demand of him his name, address, business abroad and whither he is going; and any such person who fails to identify himself and explain his actions to the satisfaction of such peace officer may be further detained and further questioned and investigated by any peace officer; provided, in no case shall the total period of such detention exceed two (2) hours, and such detention shall not be recorded as an arrest in any official record. At the end of any such detention period the person so detained shall be released unless arrested and charged with a crime."

After the parties had rested, plaintiff's motion for a directed verdict was denied and he duly excepted. He filed a series of requests for instructions to the jury and excepted to the denial of six of them as well as to two portions of the charge.

We shall first consider the five requests for instructions which raise two basic issues, namely, that there is no distinction at common law between "detention" and "arrest," and that any attempt by the legislature to create such a distinction would be invalid. He argues that such a distinction would be arbitrary, constituting a deprivation of liberty, due process, right to bail, speedy trial, representation by counsel and habeas corpus, as guaranteed by the constitution. He relies on article I, §§6, 9, 10 and 23, of the Rhode Island constitution, and article XIV, §1, of amendments to the constitution of the United States. In support thereof, he refers our attention to numerous cases in federal and state jurisdictions.

We do not perceive these cases to be in point, however, since we are of the opinion that the basic issue is whether, assuming there is no distinction between "detention" and "arrest" at common law, the legislature in the exercise of its broad police power can provide for such a distinction in reasonable circumstances. If so, it follows that the

rights of an accused, or one under arrest, are not in issue here.

If the period of detention is reasonably limited, is unaccompanied by unreasonable or unnecessary restraint, and is based upon circumstances reasonably suggestive of criminal involvement, the legislature may lawfully make a distinction between such mere detention and an arrest.

The plaintiff has in his brief reviewed the common-law strictures to which peace officers were subject in making an arrest and referred to the relaxing of such strictures, citing P. L. 1915, chap. 1261. We deem it appropriate to suggest that by the enactment of that chapter the general assembly exercised its police power in the interest of society as a whole in order that peace officers laboring on its behalf would not be unreasonably hampered in carrying out their duties or in doing so at their peril in the event of a suit for false arrest.

In the enactment of G. L. 1956, §12-7-1, however, the general assembly did relax to a degree the limitations to which the police had been subject; but it seems to us that the general assembly exercised its police power on behalf of the individual member of society by protecting him against the ignominy or humiliation of a premature arrest where the detaining officer may have had reason to suspect that the person detained was guilty of wrongdoing. Although in *State* v. *Kilday*, R. I., 155 A.2d 336, we had occasion to consider the act in question and indicated that the detaining period was not unreasonable, we did not specifically so declare but do so now. Further, we are of the opinion that the words "reason to suspect" establish a just standard for detention as distinguished from arrest.

In *De Salvatore* v. *State of Delaware*, Del., 163 A.2d 244, that court was called upon to determine the constitutionality of a statute which in all relevant particulars was identical to §12-7-1. The only notable difference between

the two statutes is that where in the Rhode Island statute "reason to suspect" is the language employed by the legislature, the Delaware act provides "reasonable ground to suspect." We conceive the distinction to be one without a difference. It appears from the *De Salvatore* case that the appellant, suspected of operating a motor vehicle under the influence of an intoxicating beverage, was advised by police officers that he was being detained pursuant to the provisions of the Delaware act and would either be charged with the offense or released within two hours. The appellant challenged the constitutionality of the act and in passing upon his contention the Delaware court stated at page 248:

> "* * * Appellant argues that arrests or detentions without warrant are constitutional only when made on 'probable cause' and not on mere suspicion. He cites numerous Federal authorities in support. We may assume that he is correct in arguing that arrests without warrant may be made only upon probable cause.
>
> "We point out, however, that 11 Del. C. 1902 purports to govern, not arrests for crime which are governed by 11 Del. C. 1906, but detentions of persons in the course of the investigating of crime. Such police practice has long been recognized as valid by the courts when kept within reasonable bounds. Cf. United States v. Bonanno, D. C., 180 F. Supp. 71, and People v. Henneman, 367 Ill. 151, 10 N. E. 2d 649. This court, also, has upheld the investigatory power of the police to detain for questioning. Wilson v. State, 10 Terry 37, 50, 109 A.2d 381, 388.
>
> "We can find nothing in 11 Del. C. 1902 which infringes on the rights of a citizen to be free from detention except, as appellant says, 'for probable cause'. Indeed, we think appellant's attempt to draw a distinction between an admittedly valid detention

upon 'reasonable ground to believe' and the requirement of §1902 of 'reasonable ground to suspect' is a semantic quibble. We point out that in Wilson v. State, in referring to the arrest of the defendant, we said, 'Nor can it be doubted that the arrest was legal, that is, upon reasonable suspicion of felony.' [10 Terry 37, 109 A.2d 390.] In this context, the words 'suspect' and 'believe' are equivalents.

"We hold therefore, that 11 Del. C. §1902 is constitutional. * * * "

That case was decided in June 1960. Later in March 1961, in *Cannon* v. *State of Delaware*, Del, 168 A.2d 108, the court again passed upon the constitutionality of the Delaware detention act. At page 110 thereof the court stated:

"* * * A 'detention' under the statute is not recorded on the police records and hence in practical effect lacks one of the normal characteristics of an arrest. This is for the protection of the citizen who is detained for questioning."

The Court further stated on the same page:

"Defendant asserts finally that if the act authorizes a 'detention' without an 'arrest' (as it clearly does), then it is unconstitutional. The assertion is not supported by argument. Presumably defendant means that a citizen so detained is deprived of his liberty without due process of law. This argument is also without merit. In a recent case we sustained the constitutionality of the act, though the attack was upon grounds somewhat narrower than defendant's apparent contention here. De Salvatore v. State, Del., 163 A.2d 244, 249.

"To set the question at rest we expressly reaffirm our holding in the De Salvatore case. The act is

clearly a reasonable exercise of the police power and is in our opinion constitutional. * * * "

In the case at bar plaintiff's remaining exception relating to the refusal of the trial justice to instruct the jury is based on his contention that the subsequent arrest for reveling, even if based on probable cause, did not excuse defendant for the original detention. This argument presupposes the invalidity of the statute in attempting to distinguish between "detention" and "arrest." Having decided that the statute in question is valid, his argument is without merit. Since it is uncontradicted that plaintiff was charged with reveling within two hours of his original detention, and his detention thereafter was a consequence of an event not connected with the apparent misdemeanor for which he was originally detained but was an arrest on a different charge, the detention of which the plaintiff complains in this suit terminated within a two-hour period.

The plaintiff further argues that in the trial justice's instructions to the jury she erred in two particulars: First, in reading the provisions of the statute in question and charging them that such was the law of the state; and secondly, in charging the jury specifically as follows: "If you find that the defendant, as he set up in his plea, has proven to you that it was a detention under 12-7-1 and not an arrest, then you must find for the defendant."

For the reasons heretofore given the first of these exceptions is without merit. The second, however, raises a separate issue not heretofore considered. The language of the trial justice to which exception was taken standing alone might be open to successful assault, but the charge when read in its entirety demonstrates that the language complained of is but a part of the instructions bearing on defendant's plea of justification. The trial justice charged the jury that under our system the defendant could have remained mute, but having set up an affirmative defense

was required to prove the same by a fair preponderance of the evidence.

The defendant's plea alleged in effect that he had "reason to suspect" as provided in §12-7-1. The trial justice stated, speaking of defendant, "He has, therefore, affirmatively placed before you his position with respect to his conduct as a law enforcement officer and he has assumed the burden of proof that he did act in accordance with the statute by a preponderance of all the evidence, whether it came from the plaintiff's witnesses, the plaintiff himself, or the defendant himself." We entertain no doubt that the jury understood that the burden was on the defendant to prove his justification by way of full compliance with the statute on which he relied.

The plaintiff, however, contends that since the pertinent language is "* * * whom he has reason to suspect is committing, has committed or is about to commit a crime * * *" the test could only be subjective, since it represents nothing more than a mere suspicion entertained by the officer. This contention misconceives the purport of "reason to suspect" as it appears in the context. These words are connotative with grounds for belief as distinguished from mere suspicion. It is for the jury to determine from all of the evidence whether in the circumstances the detaining officer was warranted in concluding that reasonable grounds did exist. His conclusion must find justification in the minds of the jury.

The plaintiff's final exception is to the denial of his motion for a directed verdict. He contends that since detention and arrest are synonymous in law and the uncontradicted evidence is that defendant, relying on an invalid act of the legislature for justification, ordered plaintiff detained, the verdict must be for plaintiff. He has more or less combined this exception with those relating to the instructions as given and those denied in contending

that detention must be equated with arrest. We have heretofore considered and disposed of that contention.

He argues further, however, that by art. I, §6, of the Rhode Island constitution, the people have secured themselves against unreasonable seizures, and that by §23 thereof they have reserved to themselves all of the rights previously possessed and not specifically enumerated in the constitution. We are persuaded that the one is dispositive of the other. By constitutionally providing against unreasonable seizures they inferentially recognize the necessity for reasonable regulations in this regard.

We are aware that there is some tendency to minimize or even discount the qualified language of the prohibition against unreasonable seizures, but we are not constrained to hold that the qualification is without significance.

It is urged, however, as we understand it, that notwithstanding this legislative power there are instances, and it is argued that §12-7-1 falls within them, when the legislature is without the right to exercise it. If this means that the legislature should forego the exercise of its police power in deference to that which was previously considered as a right, then it constitutes an attack on public policy as declared by the legislature and is not cognizable in judicial proceedings. We are concerned only with the constitutional warrant of the legislature to declare policy in any given instance.

There is, however, the question of whether there was evidence, when viewed in a light most favorable to the defendant, from which the jury could find that the defendant acted pursuant to and in accordance with the provisions of the statute on which he relied. It is clear from the record as to the condition of both Wheeler and plaintiff, the latter standing outside the car at the door on the side of the operator, and his uncooperative attitude, that there was evidence which raised a question for the jury whether

there was some justification for the officer's uncertainty in the premises.

In passing on the validity of the Delaware act the court held in the *Cannon* case that the statute contemplated the use of whatever force was necessary to effectuate detention. We are in accord with this principle. We also hold that the use of unnecessary or unreasonable force or the unnecessary incarceration of a person merely detained renders such detention an arrest ab initio, much in the same manner as the failure either to charge or release a person detained within the time limit prescribed by the statute. See *State* v. *Kilday, supra.*

In the instant case, however, the trial justice in passing on the motion for a directed verdict was confronted with the testimony of Officer Terranova on the issue of whether it was reasonable or necessary to lock plaintiff in a cell. That officer testified that when the plaintiff was brought to the station he appeared to have been drinking, "because he staggered"; that some individual neither connected with the case nor a member of the police department was present at such time; and that the defendant ordered the plaintiff locked up after the latter refused to furnish identification. On this state of the evidence the trial justice properly submitted the issue to the jury.

All of the plaintiff's exceptions are overruled and the case is remitted to the superior court for entry of judgment on the verdict.

FROST, J., did not participate in the decision.

Appendix B

GENERAL LAWS OF RHODE ISLAND, 1956

12-7-3. Arrest without warrant for misdemeanor.—A peace officer may without a warrant arrest a person for a misdemeanor, whenever:

(a) The officer has reasonable ground to believe that a misdemeanor has been or is being committed in his presence and that the person to be arrested has committed or is committing it.

(b) The person to be arrested in fact has committed or is committing a misdemeanor in the presence of the officer, and in such case it shall be immaterial that the officer did not believe him guilty or on unreasonable ground entertained belief in his guilt.

(c) The officer has reasonable ground to believe that the person to be arrested has committed a misdemeanor and either has fled from the scene of the crime or is a nonresident of this state and cannot be arrested later.

Provided, an arrest under paragraph (a) or paragraph (b) of this section must be made within twenty-four (24) hours after the commission of the misdemeanor, but an arrest under paragraph (c) may be made at any time.

12-7-4. Arrest without warrant for felony.—A peace officer may without a warrant arrest a person for a felony, whenever:

(a) The officer has reasonable ground to believe that a felony has been or is being committed and that the person to be arrested has committed or is committing it.

(b) The person to be arrested in fact has committed or is committing a felony, and in such case it shall be immaterial that the officer did not believe him guilty or on unreasonable ground entertained belief in his guilt.

12-7-7. Methods of arrest.—An arrest is made by the restraint of the person to be arrested or by his submission of his person to the custody of the person making the arrest.

12-7-8. Restraint and force used.—No greater restraint than is necessary shall be used for the detention of any person, and no unnecessary or unreasonable force shall be used in making an arrest.

12-7-10. Resisting illegal arrest.—It shall be unlawful for any person to use force or any weapon in resisting an illegal arrest by a peace officer, if such person has reasonable ground to believe that he is being arrested and that the arrest is being made by a peace officer.

12-7-12. Release of arrested person by officer in charge of police station.—The officer in charge of any police station may release any person in his station who has been arrested without a warrant:

(a) Without requiring such person to appear in court, when he is satisfied that there is no ground for making a criminal complaint against such person or when such person has been arrested for drunkenness but in the judgment of the officer need not be brought before a magistrate; or

(b) If the arrest is for a misdemeanor, upon that person signing an agreement to appear in court at a time designated.

12-7-13. Maximum period of detention.—Every person arrested shall be released either on bail or as provided in §12-7-12 or shall be brought before a judge of the district court within twenty-four (24) hours from the time of his arrest, unless a judge of the district court of the district

where he is detained or of the district court of the district where the crime was committed for good cause shown orders that he be held for a further period of not exceeding (a) twenty-four (24) hours, if he be a resident of this state or (b) forty-eight (48) hours, if he be a nonresident.

LIBRARY
SUPREME COURT, U. S.
Office Supreme Court, U.S.
FILED
JAN 30
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 615

GRANT V. KAVANAGH,
APPELLANT,

v.

ROBERT B. STENHOUSE,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND AFFIRM

ARAM K. BERBERIAN
PONTARELLI & BERBERIAN
49 Westminster Street
Providence 3, Rhode Island
Attorney for Appellant

Blanchard Printing Company, Boston, Mass. — Law Printers

In the

Supreme Court of the United States

OCTOBER TERM, 1961

No. 615

GRANT V. KAVANAGH
APPELLANT,

v.

ROBERT B. STENHOUSE,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND AFFIRM

Appellant, Grant v. Kavanagh, pursuant to Rule 16-3 opposes Appellee's Motion to Dismiss the Appellant's Appeal and to affirm the judgment of the state courts on the following grounds:

1. Notwithstanding Appellee's allegation to the contrary, Appellant set forth on page 4 of his Jurisdictional Statement, Statement of the Case, the particular stage during the proceedings in the trial court where the federal questions were raised. There, Appellant stated:

> "At the close of the testimony Kavanagh moved in writing for a directed verdict on the ground that G. L. 1956, 12-7-1 contravened the Due Process Clause of the federal constitution and the statute could not validly be the basis of any defense. Upon the denial thereof Kavanagh requested that the court instruct the jury as to the common law of arrest and arraignment stating to the court the Due Process Clause of the federal constitution required such standards.

2. Notwithstanding Appellee's statement to the contrary, Appellant stated in his Brief the stage at which and the method by which he raised in the state appellate court the federal questions involved. Appellant stated in page 5 of the Jurisdictional Statement as follows:

> "Appellant prosecuted his exceptions to all adverse trial court rulings to the Rhode Island Supreme Court. There he contended that G. L. 1956, 12-7-1 violated both the Rhode Island and the Federal constitutional provisions."

3. Notwithstanding Appellee's averment that the Supreme Court of the State of Rhode Island did not pass upon any federal question presented by Appellant therein, that court specifically adverted to Appellant's contentions (see page 11 of Jurisdictional Statement), incorporated by reference the decision of the Supreme Court of Delaware on the due process point (see page 14 Jurisdictional Statement) and over-ruled all Appellant's exceptions thereon (see page 18 Jurisdictional Statement).

4. Notwithstanding Appellee's allegation to the contrary, Appellant set forth in his Jurisdictional Statement the methods and means by which he raised the federal constitutional questions (see paragraphs 1, 2 and 3, supra).

5. Notwithstanding Appellee's statement to the contrary, Appellant directly challenged G. L. 1956, 12-7-1 as being repugnant to Article XIV, Section 1 of the Amendments to the United States Constitution.

6. It is true that the Rhode Island Supreme Court adverted to Rhode Island constitutional provisions as well as federal constitutional provisions to support its decision. But the mere fact that a statute is not repugnant to the state constitution does not obviate its repugnancy to the federal constitution.

Respectfully submitted,

ARAM K. BERBERIAN
PONTARELLI & BERBERIAN
49 Westminster Street
Providence 3, Rhode Island
Attorney for Appellant

Office Supreme Court, U.S.
FILED
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 615

GRANT V. KAVANAGH,
APPELLANT,

v.

ROBERT B. STENHOUSE,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND AFFIRM

ARAM K. BERBERIAN
PONTARELLI & BERBERIAN
49 Westminster Street
Providence 3, Rhode Island
Attorney for Appellant

Blanchard Printing Company, Boston, Mass. — Law Printers

In the
Supreme Court of the United States

OCTOBER TERM, 1961

No. 615.

GRANT V. KAVANAGH,
APPELLANT,

v.

ROBERT B. STENHOUSE,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND AFFIRM

Appellant, Grant v. Kavanagh, pursuant to Rule 16-3 opposes Appellee's Motion to Dismiss the Appellant's Appeal and to affirm the judgment of the state courts on the following grounds:

1. Notwithstanding Appellee's allegation to the contrary, Appellant set forth on page 4 of his Jurisdictional Statement, Statement of the Case, the particular stage during the proceedings in the trial court where the federal questions were raised. There, Appellant stated:

> "At the close of the testimony Kavanagh moved in writing for a directed verdict on the ground that G. L. 1956, 12-7-1 contravened the Due Process Clause of the federal constitution and the statute could not validly be the basis of any defense. Upon the denial thereof Kavanagh requested that the court instruct the jury as to the common law of arrest and arraignment stating to the court the Due Process Clause of the federal constitution required such standards.

2. Notwithstanding Appellee's statement to the contrary, Appellant stated in his Brief the stage at which and the method by which he raised in the state appellate court the federal questions involved. Appellant stated in page 5 of the Jurisdictional Statement as follows:

> "Appellant prosecuted his exceptions to all adverse trial court rulings to the Rhode Island Supreme Court. There he contended that G. L. 1956, 12-7-1 violated both the Rhode Island and the Federal constitutional provisions."

3. Notwithstanding Appellee's averment that the Supreme Court of the State of Rhode Island did not pass upon any federal question presented by Appellant therein, that court specifically adverted to Appellant's contentions (see page 11 of Jurisdictional Statement), incorporated by reference the decision of the Supreme Court of Delaware on the due process point (see page 14 Jurisdictional Statement) and over-ruled all Appellant's exceptions thereon (see page 18 Jurisdictional Statement).

4. Notwithstanding Appellee's allegation to the contrary, Appellant set forth in his Jurisdictional Statement the methods and means by which he raised the federal constitutional questions (see paragraphs 1, 2 and 3, supra).

5. Notwithstanding Appellee's statement to the contrary, Appellant directly challenged G. L. 1956, 12-7-1 as being repugnant to Article XIV, Section 1 of the Amendments to the United States Constitution.

6. It is true that the Rhode Island Supreme Court adverted to Rhode Island constitutional provisions as well as federal constitutional provisions to support its decision. But the mere fact that a statute is not repugnant to the state constitution does not obviate its repugnancy to the federal constitution.

Respectfully submitted,

ARAM K. BERBERIAN
PONTARELLI & BERBERIAN
49 Westminster Street
Providence 3, Rhode Island
Attorney for Appellant